



**INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
LAKELAND HIGH SCHOOL, LAGRANGE**

CRIMINAL LAW

Was evidence seized from a locked box discovered during the stop of a stolen van properly suppressed because it was seized in violation of the Defendants' rights under the Fourth Amendment of the U.S. Constitution and under Article I, Section 11 of the Constitution of Indiana?

*State of
Indiana v.
Kevin J.
Lucas and
Matthew
S. Winkle*

**Appeal
from:**
Shelby
Superior Court

The Honorable
Jack A. Tandy,
Judge

**Oral
Argument:**
November 15,
2006
1:00 p.m. –
2:00 p.m.
30 minutes
each side

CASE SYNOPSIS

**Facts and Procedural
History**

On February 12, 2005, while on routine patrol, Shelby County Sheriff's Deputy Chris Holder spotted a van with a loose license plate traveling on Interstate 74. Deputy Holder ran a computer check on the van's license plate number and learned that it had been reported stolen. After calling for backup, Deputy Holder stopped the van. The van's driver, Matthew Winkle, and passenger, Kevin Lucas, were arrested, handcuffed, and Mirandized.

One of the assisting officers, Deputy James Thurman, then asked Winkle if there were any weapons in the van. Winkle "hesitated and nervously stated that he...didn't have any guns." Deputy Thurman and Deputy Larry Lacy then began to search the van, which was "very, very cluttered and full of stuff," including baskets of clothing, a cooler, a fifty pound bag of dog food, and a bag of frozen meat.

The officers discovered a black plastic case just behind the console between the van's front seats. Deputy Thurman opened the container and found an unloaded nine-millimeter assault pistol and a high capacity magazine. The officers also discovered a "bright, new and shiny" metal box in the van. The metal box was locked, so Deputy Lacy jimmied the lock open with a pocketknife. Inside the box, he found cash, a pipe, marijuana, and a bag containing a crystal-like substance he believed to be methamphetamine. The officers also found a plastic bottle containing LSD. The van was towed to the Shelby County Criminal Justice Center to be inventoried. On February 17, 2005, a search warrant was issued for the information contained in cell phones and compact discs also found inside the van.

On February 14, 2005, the State charged both Winkle and Lucas with Class A felony possession of methamphetamine, Class A felony dealing methamphetamine, Class C felony possession of a controlled substance, Class A misdemeanor possession of marijuana, and Class B misdemeanor possession of

*State of Indiana v. Kevin J. Lucas and Matthew S. Winkle***Case Synopsis (continued)**

paraphernalia. In addition, Winkle was charged with additional counts of Class D felony receiving stolen property, Class A misdemeanor carrying a handgun without a license, and Class D felony maintaining a common nuisance. Lucas was also charged with Class B misdemeanor visiting a common nuisance.

The Defendants each filed a motion (*see Glossary*) to suppress the evidence discovered in the van, alleging that the search of the closed containers inside the van had violated their Fourth Amendment rights. (*See Glossary*.) The State objected to the Defendants' motions, arguing that the Defendants had no standing (*see Glossary*) to challenge the search because the van was stolen. (In this context, "standing" means the Defendants' right to make a claim or dispute the officers' conduct concerning the stolen van, since they had no ownership interests in it.)

At a hearing on the Defendants' motions, the deputies testified that they had searched the van under standard sheriff's department procedure for inventorying vehicles, which provided that closed containers could be opened and searched.

The Trial Court Ruling & Parties' Arguments

After the suppression hearing (*see Glossary*), the trial court found that the Defendants had standing to challenge the deputies' search of the containers, finding it "fundamentally

unfair for the State to charge a person with possessing contraband, and at the same time, argue they cannot raise issues with respect to search and seizure on the basis the Defendants do not have sufficient possessory interest in the contraband." The trial court found that the search of the black plastic box containing the assault pistol was a valid search incident to arrest. Thus, the trial court ruled that the gun was admissible as evidence against the Defendants. However, the trial court held that the locked metal box presented no safety risk to the officers, and that the search of the locked box violated Defendants' rights under the Fourth Amendment. Therefore, the cash, drugs, and paraphernalia found in the locked metal box would not be allowed as evidence against the Defendants.

The State appeals the trial court's decision to suppress the evidence found inside the locked box. First, the State contends that Lucas and Winkle had no legitimate expectation of privacy in the stolen van or any containers inside it. The State further argues that even if the Defendants can properly challenge the search of the locked box, the search was a valid inventory search of a stolen vehicle about to be impounded. In response, the Defendants argue that even if they did not have standing to challenge a search of the van itself, they do have a reasonable expectation of privacy in a locked container inside it.

Case Synopsis (*continued*)

GLOSSARY

United States Constitution Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Indiana Constitution Article 1, Section 11

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Motion: A request that a court make a ruling or issue an order.

Standing: In this case, the Defendants' right to make a claim or dispute official conduct. The term is also used to describe a party's right to bring a lawsuit.

Suppression Hearing: A hearing on a criminal defendant's motion to prohibit the prosecutor's use of evidence alleged to have been obtained in violation of the defendant's rights. This hearing is held outside of the presence of the jury, either prior to or during the trial.



Opinion in this case expected:
By the end of Calendar Year 2006

For students at Lakeland High School, Westview High School, and Prairie Heights High School, printed copies of the opinion will be forwarded to Mr. Boles, Mr. Albert, and Mr. McLaughlin .

For more information, please visit the Indiana Court of Appeals website at <http://www.in.gov/judiciary/appeals/>

Or contact:

Maura Pierce
Community Liaison
Indiana Court of Appeals
115 W. Washington Street
Suite 1270 South
Indianapolis, IN 46204
(317) 234-4859
E-mail: mpierce@courts.state.in.us

Court of Appeals opinions are available online at <http://www.in.gov/judiciary/opinions/appeals.html>.

Locate archived opinions at <http://www.in.gov/judiciary/opinions/archapp.html>

TODAY'S PANEL OF JUDGES

Hon. Nancy H. Vaidik (Porter County), Presiding

- Judge of the Court of Appeals since January 2000

Nancy H. Vaidik was appointed to the Court by Governor Frank O'Bannon on January 19, 2000. She grew up in Portage, Indiana, and graduated from Valparaiso University with High Distinction in 1977 and from Valparaiso University School of Law in 1980.

Prior to her elevation to the appellate court, Judge Vaidik served as a trial court judge in Porter County for seven years. She began her legal career with the Porter County Prosecutor's Office, achieving the status of chief deputy prosecutor before joining the law firm of J.J. Stankiewicz and Associates.

Judge Vaidik is a former adjunct professor of law at Valparaiso University School of Law and is currently an adjunct professor of law at Indiana University School of Law in Bloomington. She teaches for the National Institute for Trial Advocacy and the College of Law of England and Wales. She is the former president of the Indiana Judge's Association and has received numerous awards, including the Indiana Domestic Violence Coalition Judge of the Year and

the Paragon of Justice award from the BLSA and HLSA chapters at Valparaiso University School of Law.

Judge Vaidik, who was retained on the Court by election in 2002, is married and has two daughters.

Hon. Paul D. Mathias (Allen County)

- Judge of the Court of Appeals since March 2000

Paul D. Mathias was appointed to the Court by Governor Frank O'Bannon in March, 2000. Judge Mathias is a fifth generation Hoosier and grew up in Fort Wayne. He graduated from Harvard University, *cum laude*, in 1976 and from Indiana University School of Law – Bloomington in 1979, where he was a member of the law school's Sherman Minton Moot Court Team and *Order of Barrister*.

Judge Mathias practiced law for six years in Fort Wayne, concentrating in construction law, personal injury and appellate practice. In 1985, he was

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began just prior to the Court's centennial in 2001.

Today's oral argument is the 171st case the Court of Appeals has heard "on the road" since early 2000.

Among the sites for traveling oral arguments are law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. Paul D. Mathias *(continued)*

appointed Referee of the Allen County Small Claims Court, where he served until his appointment as Judge of the Allen Superior Court – Civil Division by Governor Evan Bayh in 1989.

Judge Mathias served as an officer of the Indiana Judges Association from 1993 to 1999 and as its president from 1997 to 1999. He received the Centennial Service Award from the Indiana State Bar Association in 1996, and a Sagamore of the Wabash Award from two governors. Judge Mathias, who was retained on the Court of Appeals by election in 2002, is married and has two sons.

Hon. Michael P. Barnes **(St. Joseph County)**

- Judge of the Court of Appeals since May 2000

Michael P. Barnes was appointed to the Indiana Court of Appeals by Governor Frank O'Bannon on May 22, 2000. Judge Barnes received his B.A. from St. Ambrose College in Davenport, Iowa in 1970 and his J.D. from the University of Notre Dame Law School in 1973.

Hon. Michael P. Barnes *(continued)*

Judge Barnes was a Deputy Prosecuting Attorney and privately practiced law in South Bend from 1973 to 1978. In 1978 he was elected the St. Joseph County Prosecuting Attorney, a position he held for 20 years. During that tenure, Judge Barnes was elected President of the National District Attorneys Association (1995-1996), Chairman of the Board, Indiana Prosecuting Attorneys Council (1982-1983, 1992-1993), President of the St. Joseph County Bar Association (1992-1993), National Board of Trial Advocacy (1995-1996), National Advisory Council on Violence Against Women (1997), Chairman of the Board of Regents, National College of District Attorneys (1997-1998), American Prosecutor's Research Institute (1997-1998), and various other professional and civic organizations.

Judge Barnes is a member of the Indiana Bar Foundation, the St. Joseph County Bar Association, and serves on the Board of Directors of the Friends of the St. Joseph County Juvenile Justice Center. Judge Barnes was retained on the Court of Appeals by election in 2002. He is married to Alberta Edwards Barnes, and they are the parents of two sons, Tim and John.

The 15 members of the Indiana Court of Appeals issue some 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



ATTORNEYS FOR THE PARTIES

For Appellants, State of Indiana:
Cynthia Ploughe
Indiana Deputy Attorney General

Cynthia Ploughe is a native of Tipton County who originally had no intention of attending college. After graduating from Tipton High School, she moved to Washington, D.C. to work for the Federal Bureau of Investigation, which trained her to be a fingerprint examiner. Four years later, she returned to Indiana, and after encouragement from a family friend, she began her collegiate studies at Indiana University in Kokomo. She eventually transferred to Ball State University, earning a bachelor's degree in 1986 with a major in political science and a minor in journalism.

Following graduation, Ms. Ploughe entered Indiana University Law School in Indianapolis and began working at the Office of the Attorney General at the end of her first year. In 1990, after graduating from law school and passing the Indiana bar exam, she was sworn in as a Deputy Attorney General. She conducted research and responded to briefs submitted by defendants in cases such as murder, child molestation, and theft. She regularly presented cases in oral argument before the Indiana Supreme Court and the Indiana Court of Appeals.

In 1997, she left the Attorney General's office to become a deputy prosecutor in Marion County. She first prosecuted misdemeanor crimes — minor drug possession, operating a vehicle while intoxicated, prostitution, shoplifting — but soon began prosecuting felony offenses, including major drug cases, such as dealing cocaine and methamphetamine.

Ms. Ploughe returned to the Indiana Attorney General's office in 2001 and became Section Chief of Criminal Appeals in 2004. She supervises more than a dozen attorneys and acts as an appellate liaison for Indiana's 90 elected prosecutors and their deputies. Prosecutors who obtain a trial court ruling they don't like confer with Ms. Ploughe to determine whether the State will appeal. If a case is appealed, such as *State v. Lucas*, Ms. Ploughe compiles the case record and prepares the Brief of Appellant.



ATTORNEYS FOR THE PARTIES

For Appellees, Kevin J. Lucas and Matthew S. Winkle:

**H. Curtis Johnson
Brown, DePrez & Johnson, P.A.
Shelbyville**

**James Lisher
Lisher Law Firm
Shelbyville**

H. Curtis Johnson was born in Shelbyville in January, 1972. He has extensive experience abroad, mostly in the Spanish-speaking world, first studying in Valencia, Spain as a junior at Wabash College. After graduation from Wabash, he taught English for 10 months in Saltillo, Mexico before beginning graduate school, during which he worked for a summer with a law firm in Mexico City, studied and worked at a law firm in Barcelona, Spain, and worked as a consultant for a U.S. Agency for International Development-funded project in Panama.

Mr. Johnson graduated from Wabash College in 1994 with a Spanish major; *cum laude*. In 2000, he earned both his M.B.A. from the Kelly School of Business

and his law degree from the law school at Indiana University-Bloomington. After concluding his studies in Bloomington, he was a research fellow at the Centre for International Law at Cambridge University, England.

Mr. Johnson left the morning following his bar exam for an assignment with the MBA Enterprise Corps, first in southern Ukraine for three months of intensive Russian training, and then to Atyrau, Kazakhstan to work as a consultant for a USAID project. He then returned to his native Shelbyville and engaged in the practice of law.

Mr. Johnson was admitted to the Indiana bar in 2001. He is a public defender in Shelby, Hancock and Decatur counties, and a member of the Shelby County, Indiana State, and American bar associations. In 2005, he won the Outstanding Young Lawyer Award from the Indiana State Bar Association. Mr. Johnson is admitted to practice before United States District Court, Southern District of Indiana.

(see p. 8 for James Lisher)



AMICUS BRIEFS

A person who is not a party to a lawsuit may file a brief of amicus curiae, with permission of the Court, if he or she has a strong interest in the subject matter.

- There are no amicus briefs in this case.

ATTORNEYS FOR THE PARTIES

For Appellees, Kevin J. Lucas and Matthew S. Winkle:

**James Lisher
Lisher Law Firm
Shelbyville**

James R. Lisher has 21 years' experience in both the public and private practice of law. From 1983 to 1995, he served three terms as the Shelby County prosecuting attorney. From 2002 to the present, he has been the chief public defender of Shelby County, overseeing six other contract public defenders. Additionally, since 1995, he has maintained a general practice of law, with a particular focus on criminal, family, and personal injury law.

Mr. Lisher is a member of the Indiana State, Indianapolis, and Shelby County bar associations and the Indiana Trial Lawyers Association. He is a former president of the Shelby County Bar Association and also served as president of the Indiana Prosecuting Attorneys Association. He has also served on the Board of Directors of the Young Lawyers Section of the Indiana State Bar Association, and as past chairman of the Solo and Small Firm sections of the state bar.

Mr. Lisher's areas of legal expertise include tax, estate planning, probate, personal injury, contracts, real estate, business associations, criminal & civil litigation, bankruptcy, and family law. He has conducted over sixty jury trials and hundreds of court trials.

Mr. Lisher graduated from Indiana University in 1969. He worked his way through law school as a bailiff, juvenile probation officer, and with the help of many internship programs. He earned his law degree in 1975. He also served in the United States Navy from 1970 to 1976. He is married to an 8th grade science teacher and has two adult children – a daughter who is a podiatrist in Dayton, Ohio, and a son who is an Air Force JAG officer stationed at a stealth fighter base in New Mexico.

